

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Permit 19493 (Application 28075)

Florence Roller, Lillian Roller and Nat Merlo

NOTICE OF PROPOSED REVOCATION

SOURCE: (1) Unnamed Stream tributary to Pilarcitos Creek
(2) Pilarcitos Creek

COUNTY: San Mateo

Pursuant to sections 1410-1410.2 of the California Water Code, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), is proposing to revoke Permit 19493 because the Permittees have failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permit 19493 and have not made beneficial use of the water in accordance with the permit, the Water Code, and the State Water Board's regulations. In addition, the Division proposes to revoke Permit 19493 because the Permittees have failed to use beneficially all or part of the water for the purpose for which it was appropriated in accordance with the Water Code.

The proposed revocation is based upon the following facts, information and conclusions:

The Permittees have not shown that due diligence has been exercised.

1. The State Water Board issued Permit 19493 to California Evergreen Nurseries, Inc. on June 7, 1985. The State Water Board assigned the permit to Florence Roller, Lillian Roller and Nat Merlo on March 12, 1991, subject to the terms and conditions listed in the permit.
2. The permit requires that Permittees complete construction work by December 1, 1986. The Permittees did not complete construction by this date.
3. The permit requires that Permittees make use of the water authorized under the permit by December 1, 1987. The Permittees did not make full use of water by this date.
4. An order approving a new development schedule was issued on September 13, 1988, extending the date to complete full, beneficial use to December 31, 1992. The Permittees did not complete full, beneficial use of water by this date.
5. Division staff inspected the project on August 26-27, 1996. The Division staff inspection report states that the project is complete, but Reservoirs A and B as constructed are small enough that their capacities are fully covered by companion Permit 17849 (Application 25407). Consequently, no diversion and use of water was occurring under Permit 19493, and Division staff recommended revocation of the permit.
6. The Permittees submitted a Petition for Extension of Time dated September 15, 2000 to the Division. The petition is incomplete because no responses were given to questions 4 through 16 on the form regarding the quantity of water used, length of extension requested, etc.

SURNAME

John 6-13-08

OK 6/13/08

Shirley
8/11/08

Kassel for
Whitney
8/12/08

7. In the petition, the Permittees state that project ownership changed due to death of the prior owners.
8. Division staff required, by letter dated December 13, 2004, that the following information be submitted by January 12, 2005:
 - a. Define the proposed new project.
 - b. Locate all reservoirs on a U.S. Geological Survey quadrangle map.
 - c. Describe the facilities (dam length, surface area, storage capacity).
 - d. Provide a showing of cause for the State Water Board to approve a time extension, (section 844, Title 23, California Code of Regulations).
9. The Permittees did not respond to the Division's December 13, 2004 letter. None of the required information was submitted to the Division by the January 12, 2005 deadline.
10. On August 8, 2005, the Division denied the petition for time extension because Permittee failed to show: (1) that Permittees exercised due diligence; (2) that failure to comply with previous time requirements was the result of obstacles that could not be reasonably avoided; and (3) that satisfactory progress would be made if the Division granted the extension.
11. The time to complete full beneficial use ended in 1992, and the Division has documented that no water diversion and use has occurred pursuant to the permit. (Inspection Report, August 26-27, 1996.) There is no valid time extension for the permit.

Based on the above facts and information, the Division concludes that cause exists for the revocation of permit 19493 pursuant to Water Code section 1410, subdivision (a) because Permittees have failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permit 19493 and have failed to apply to beneficial use all or part of the water authorized for appropriation as contemplated in the permit and in accordance with the Water Code and the regulations of the State Water Board.

As required by Water Code section 1410.1, you are hereby notified that unless the Division receives a written request for a hearing, signed by or on behalf of the Permittee, the State Water Board will revoke Permit 19493, based on the above facts, information and conclusions. The written request for hearing must be postmarked or delivered no later than 15 days from the receipt of this notice. You may request a hearing by delivering or mailing the request to the State Water Board at the following address within the time period provided: Division of Water Rights, P. O. Box 2000, 1001 I Street, Sacramento, CA 95812-2000.

Based on the above facts and conclusions, the State Water Board, Division of Water Rights will revoke Permit 19493 unless the Division receives a written request for hearing within the time period specified above.

STATE WATER RESOURCES CONTROL BOARD
ORIGINAL SIGNED BY: J.W. Kassel

for

Victoria A. Whitney, Chief
Division of Water Rights

Dated: AUG 12 2008

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 28075

PERMIT 19493

LICENSE _____

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE
AND ADDING A POINT OF DIVERSION

WHEREAS:

1. Permit 19493 was issued to California Evergreen Nurseries, Inc. on June 7, 1985 pursuant to Application 28075.
2. A petition for extension of time within which to develop the project and apply the water to the proposed use and a petition to add a point of diversion at Reservoir B has been filed with the State Water Resources Control Board.
3. Reservoir B collects some water to storage. Therefore it is a point of diversion and should be denoted as such.
4. The Board has determined that the petitioned changes do not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.
5. The permittee has proceeded with diligence and good cause has been shown for extension of time.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Condition 8 of the permit be amended to read:

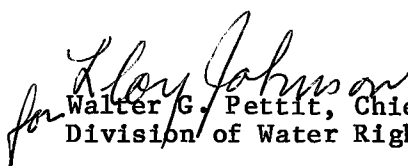
COMPLETE APPLICATION OF THE
WATER TO THE PROPOSED USE
SHALL BE MADE ON OR BEFORE

December 31, 1992 (0000009)

2. Condition No. 2 of the permit be amended to read:

- 1) Point of Diversion to offstream storage — California Coordinate System, Zone 3, North 359,300 feet East 1,442,800 feet, being within the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 28, T5S, R5W, MDB&M.
- 2) Point of Storage Diversion and Rediversion -- (Reservoir A) California Coordinate System, Zone 3, North 359,200 feet East 1,444,000 feet; being within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 28, T5S, R5W, MDB&M.
- 3) Point of Storage, Diversion and Rediversion — (Reservoir B) California Coordinate System, Zone 3, North 358,400 feet and East, 1,443,400 feet; being within the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 28, T5S, R5W, MDB&M.

Dated: **SEPTEMBER 13 1988**


Walter G. Pettit, Chief
Division of Water Rights

STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 19493

Application 28075 of California Evergreen Nurseries, Inc. (over)
Route 1, Box 2CC, Half Moon Bay, California 94019

filed on March 27, 1984, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

(1) Pilarcitos Creek

Pacific Ocean

(2) Unnamed Stream

Pilarcitos Creek

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Town- ship	Range	Base and Meridan
Diversion to Offstream Storage (1) North 359,300 and East 1,442,800, California Coordinate System, Zone 3	SW $\frac{1}{4}$ of NW $\frac{1}{4}$	28	5S	5W	MD
Diversion to Offstream Storage and Rediversion (Reservoir "A") (2) North 359,200 and East 1,444,000 California Coordinate System, Zone 3	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	28	5S	5W	MD

County of San Mateo

3. Purpose of use:	4. Place of use:	Section	Town- ship	Range	Base and Meridan	Acres
Fire Protection						
Recreational						
Stockwatering	Reservoir "B" in SE $\frac{1}{4}$ of NW $\frac{1}{4}$	28	5S	5W	MD	
Irrigation	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	28	5S	5W	MD	13
	SW $\frac{1}{4}$ of NW $\frac{1}{4}$	28	5S	5W	MD	10
	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	28	5S	5W	MD	15
	NE $\frac{1}{4}$ of NW $\frac{1}{4}$	28	5S	5W	MD	7
	NW $\frac{1}{4}$ of NW $\frac{1}{4}$	28	5S	5W	MD	5
					Total	50

The place of use is shown on map filed with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 25 acre-feet per annum to be collected from December 1 of each year to April 30 of the succeeding year.

The maximum rate of diversion to offstream storage shall not exceed 1 cubic foot per second.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

(0000005)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

7. Construction work shall be completed by December 1, 1986.

(0000008)

8. Complete application of the water to the authorized use shall be made by December 1, 1987.

(0000009)

9. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

(0000010)

10. Permittee shall allow representatives of the State Water Resources Control Board and other parties as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

(0000011)

11. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) to installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation. The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

12. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

13. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released. (0050043)

14. In accordance with the requirements of Water Code Section 1393, permittee shall clear the site of the reservoir of all structures, trees and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes. (0120050)

15. For the protection of fish and wildlife, permittee shall:

a. At all times bypass a minimum of five cubic feet per second. The total streamflow shall be bypassed whenever it is less than the designated amount.

b. Not divert when Pilarcitos Creek at the point of diversion is flowing between 10 and 17 cubic feet per second. (0140060)

16. No water shall be diverted under this permit until permittee has installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the flow required by the conditions of this permit. Said measuring device shall be properly maintained. (0060062)

17. In accordance with Section 1601, 1603, and/or Section 6100 of the Fish and Game Code, no work shall be started on the diversion works and no water shall be diverted until permittee has entered into a stream or lake alteration agreement with the Department of Fish and Game and/or the Department has determined that measures to protect fishlife have been incorporated into the plans for construction of such diversion works. Construction, operation, and maintenance costs of any required facility are the responsibility of permittee. (0000063)

18. The total quantity of water diverted from point of diversion (1) under this permit and permit issued pursuant to Application 25407 shall not exceed 39 acre-feet per annum. (0000114)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated:

JUNE 7 1985

STATE WATER RESOURCES CONTROL BOARD

Raymond Wash

Chief, Division of Water Rights